

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
CIVIL DOCKET

ROSEANNIE CUFFY	Plaintiff)
)
Vs.)
)
THE BANK OF NOVA)
SCOTIA F/K/A)
<u>SCOTIABANK, ET AL</u>	Defendant)

CASE NO: ST-2019-CV-0000502
FILING DATE: September 05, 2019
JUDGE: Hon. Kathleen Mackay
CASE TYPE: BREACH OF CONTRACT -
SECONDARY null
PETITION

<u>PARTY NAME</u>	<u>LITIGANT</u>	<u>PARTY TYPE</u>
CUFFY , ROSEANNIE	P001	PLAINTIFF
RIVERS ESQ., CLIVE	P001	ATTORNEY FOR PLAINTIFF OR PETITIONER
JOHN-DOE INSURANCE CO. ,	D003	DEFENDANT
ASCENDANCY USVI, LLC ,	D002	DEFENDANT
THE BANK OF NOVA SCOTIA F /K/A SCOTIABANK ,	D001	DEFENDANT

EXHIBIT 1

DOCKETS ENTERED ON THIS CASE:

<u>DOCKET DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
10/22/2019	NOTICE OF FILING RETURN OF SERVICE ON BANK OF NOVA SCOTIA FILED BY CLIVE RIVERS, ESQ.	
10/16/2019	NOTICE OF FILING FILED BY CLIVE RIVERS, ESQUIRE.	
10/11/2019	AMENDED SUMMONS FILED BY CLIVE RIVERS, ESQUIRE.	
10/09/2019	FEE RECEIVED RECEIPT # - 00186689	6.00
09/17/2019	AMENDED SUMMONS FILED FOR ASCENDANCY USVI LLC FILED BY CLIVE RIVERS, ESQUIRE.	
09/16/2019	FILE FORWARDED TO JUDGE'S CHAMBER	
09/14/2019	(2) 21 DAY SUMMONS ISSUED TO THE BANK OF NOVA SCOTIA AND ASCENDANCY USVI, LLC	
09/14/2019	DOCKETING LETTER AND NOTICE OF JUDGE ASSIGNMENT ISSUED BY THE CLERK	
09/14/2019	CASE SENT FROM NON-JURY TO JURY	
09/14/2019	CASE FILE RECEIVED BY JURY TRIAL DIVISION	
09/09/2019	FEE RECEIVED RECEIPT # - 00186007	75.00
09/06/2019	DIRECT JUDGE ASSIGNMENT Hon. Kathleen Mackay KM	
09/05/2019	COMPLAINT FILED BY CLIVE RIVERS, ESQ.	
09/05/2019	FILING FEE ASSESSED	
09/05/2019	CASE INFORMATION AND LITIGANT DATA FORMS FILED BY CLIVE RIVERS, ESQ.	

TOTAL NUMBER OF ENTRIES: 15

PREPARED BY:

*****END OF REPORT*****

A CERTIFIED TRUE COPY
DATE 10/24/2019
ESTRELLA H. GEORGE
CLERK OF THE COURT
BY Sharon M. Tunell
COURT CLERK II

AMENDED SUMMONS

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

ROSEANNIE CUFFY**Plaintiff,****v.**

**BANK OF NOVA SCOTIA, ASCENDANCY, LLC)
JOHN DOE INSURANCE COMPANY**

Defendants.

)
) **CIVIL NO. ST-19-CV-502**
)
) **ACTION FOR BREACH OF**
) **CONTRACT, BREACH OF**
) **IMPLIED COVENANT OF**
) **GOOD FAITH & FAIR DEALING**
) **BAD FAITH**
)
) **JURY TRIAL DEMANDED**
)

TO: Bank of Nova Scotia**ADDRESS:** Christian Borgensen, Senior Manager Compliance, 214C Altona & Welgunst. St. Thomas, VI 00802

Within the time limited by law (see note below) you are hereby required to appear before this Court and answer to a complaint filed against you in this action. In case of your failure to appear or answer, judgment by default will be taken against you as demanded in the complaint, for Action for Breach of Contract, Breach of Implied Covenant of Good Faith & Fair Dealing, Bad Faith.

Witness my hand and the seal of this Court this 15th day of October, 2019.

ESTRELLA H. GEORGE
Clerk of the Court

By: [Signature]
Deputy Clerk

(Attorney for the Plaintiff)

Clive Rivers, Esq.

8000 Nisky Center, Suite 233

St. Thomas, VI 00802

Tel. No.: (340) 776-4666

Fax: (340) 776.4525

ccrivers64@gmail.com

NOTE: The Defendant, if served personally, is required to file his/her answer or other defense with the Administrator/Clerk of this Court, and to serve a copy thereof upon the plaintiff's attorney within twenty (20) days after service of this summons, excluding the date of service. If served by publication or by personal service outside of the jurisdiction the defendant is required to file his/her defense with the Clerk of this Court, and to serve a copy thereof for the plaintiff within thirty (30) days after the completion of the period of publication or personal service outside of the jurisdiction.

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

ROSEANNIE CUFFY,

Plaintiff,

v.

**THE BANK OF NOVA SCOTIA f/k/a
SCOTIABANK, ASCENDANCY
USVI, LLC, and JOHN-DOE INSURANCE CO.)**
Defendant,

CIVIL NO. ST-19-CV-__

**BREACH OF CONTRACT,
BREACH OF IMPLIED COVENANT
OF GOOD FAITH & FAIR
DEALINGS, BAD FAITH**

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff **ROSEANNIE CUFFY**, through the undersigned The Law Office of Clive Rivers (Clive Rivers, Esq.), files this action for breach of Contract, Breach of Implied Covenant of Good Faith & Fair Dealings and Bad Faith against the Defendants the Bank of Nova Scotia, Ascendancy USVI, LLC, and John Doe Insurance Company, jointly and severally. In support of this Complaint, the Plaintiff states:

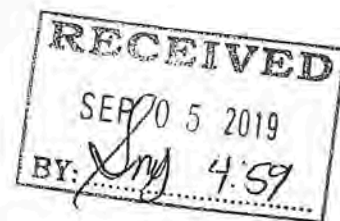
JURISDICTION

1. The Court has jurisdiction pursuant to 4 V.I.C. §76.

ALLEGATIONS

THE PARTIES

2. Plaintiff, **ROSEANNIE CUFFY**, is at all times pertinent, a domiciliary and a resident of St. Thomas, U.S. Virgin Islands. The Plaintiff is an owner of real properties located at 19-2-10, Estate Smith Bay, St. Thomas, against which the Defendant held a mortgage.



3. The Defendant, **BANK OF NOVA SCOTIA**, further known as **SCOTIABANK**, is a banking institution licensed to do business in the Virgin Islands. The Defendant operates a branch in 214 C Estate Altona & Welgnust, St. Thomas, U.S. Virgin Islands.
4. Defendant **ASCENDANCY, USVI LLC** is a loan servicing provider located at 5304 Yacht Haven Grande, Suite 100, St. Thomas, U.S. Virgin Islands 00802. On or about May 2019, Defendant Bank of Nova Scotia transferred the servicing of Plaintiff's mortgage loan to Defendant Ascendancy, USVI LLC.
5. Defendant **JOHN DOE INSURANCE COMPANY** is an unknown entity that is believed to be the insurance company that insured the Plaintiff's property.

COUNT I – BREACH OF CONTRACT

6. Plaintiff is the owner of the property located at: 19-2-10 Philsbury Heights, Smith Bay, St. Thomas, U.S. Virgin Islands and the Defendants Scotiabank and/or Ascendancy USVI LLC hold a mortgage on the respective property.
7. Upon information and belief, on or about March 2017, the Defendant Scotiabank informed the Plaintiff that it purchased hazard insurance for the property located at 19-2-10 Estate Smith Bay, St. Thomas, U.S. Virgin Islands and included the cost of the policy in the Plaintiff's mortgage. Defendant Scotiabank has not disclosed the entity from whom it purchased the hazard insurance policy. Thus, the Defendants jointly and severally, as mortgagee and insurer of the Plaintiff's property, had a duty to indemnify the Plaintiff for loss or damage sustained by hurricanes and/or water.

8. In September 2017, the territory was struck by two Category 5 Hurricanes, Irma and Maria respectively. The damage to properties, including but not limited to the Plaintiff's, was severe.
9. The Plaintiff sustained loss/damages to the mortgaged-property to an extent that necessitated an indemnification claim for loss/damaged property to be filed with the Defendants.
10. Plaintiff timely submitted her claim for indemnification with the Defendants.
11. The Defendants accepted the Plaintiff's claim but failed to offer a reasonable amount to compensate the Plaintiff's claim. Specifically, the Plaintiff's losses were estimated at \$266, 800.00 and the Defendants' offer equaled \$93,831.58.
12. The amount offered as compensation on Plaintiff's indemnity claim was far below the actual amount of damage sustained and, as a consequence of the Defendants' insufficient offer, the Defendants breached its duty to indemnify the Plaintiff for the loss/damage suffered as a result of the 2017 Hurricanes Irma and Maria.
13. By this suit Plaintiff seeks recovery for such harm.

**COUNT II- BREACH OF IMPLIED WARRANTY OF GOOD FAITH & FAIR
DEALINGS**

14. Plaintiff repeats and realleges paragraphs 1 – 13 as if fully set forth in this Count.
15. Upon information and belief, the Defendants insured the Plaintiff's property for hazard, including but not limited to windstorms and water damage, that imposed a duty of good faith and fair dealing upon the Defendants when compensating the Plaintiff for loss/damages related to windstorm and/or water damage.

16. Defendants breached its duty of good faith and fair dealing when they offered an amount woefully inadequate to compensate the Plaintiff for actual loss/damage suffered as a result of Hurricanes Irma and Maria.
17. As a result of such breach of good faith and fair dealing, and such egregious bad faith conduct, the Plaintiff has suffered, and is continuing to suffer, serious actual and potential harm and, by this suit, Plaintiff seeks recovery for such harm.

COUNT III – BAD FAITH

18. Plaintiff repeats and reallege paragraphs 1 through 17 as if fully set forth here.
19. The hazard insurance policy held on the Plaintiff's property imposed a duty of good faith and fair dealing upon the Defendants when negotiating indemnification claims related to the policy.
20. In September 2017, the territory was struck by two Category 5 hurricanes, Irma and Maria respectively. The damage to properties, including but not limited to the Plaintiff's, was catastrophic.
21. Defendants included hazard insurance in the mortgage held on Plaintiff's property and as a consequence was obligated to insure Plaintiff's property against windstorm and water damage.
22. Hurricanes Irma and Maria of 2017 caused severe property damage to Plaintiff's real property and the damages required the Defendants to indemnify Plaintiff for her hurricane-related property-losses.

23. As soon as practicable after the hurricane(s)-related property damage, Plaintiff reported such loss or damage with full particulars to the Defendants.
24. Although the Plaintiff's hazard insurance policy provides that the Defendants will indemnify the Plaintiff for losses incurred by the 2017 windstorms and, despite Plaintiff's timely report of hurricane-related property damage to the Defendants, the amount offered by the Defendants for Plaintiff's indemnification was inadequate to properly compensate for the amount of actual damage incurred by the Plaintiff.
25. Consequently, the Defendants breached their duty of good faith and fair dealing to adequately compensate the Plaintiff for her property losses/damages.
26. Further, the Defendants' breach are flagrant, willful, and wanton and are undertaken by Defendants to protect their own pecuniary interests without regard to their obligations under the insurance policies or to Plaintiff's interest.
27. The acts and omissions of the Defendants alleged herein, known and yet to be known, constitute bad faith.
28. As a result of such breach of good faith and fair dealing, and such egregious bad faith conduct, the Plaintiff has suffered, and is continuing to suffer, serious, actual and potential harm and, by this suit, Plaintiff seeks recovery for such harm.

FOR THE REASONS STATED, the Plaintiff requests this Court issue a judgment against the Defendants that:

- A. orders the Defendants, jointly and severally, to pay the full amount necessary to compensate the Plaintiff for property loss incurred as a result of Hurricanes Irma and Maria;
- B. Interest on the judgment from the date the judgment is rendered until paid;
- C. Court costs, including reasonable attorney's fees;
- D. Such other and further relief as the Court may deem just and proper.

A JURY TRIAL IS DEMANDED AS TO ALL ISSUES.

Respectfully Submitted,

LAW OFFICE OF CLIVE RIVERS



DATED: September 6, 2019

CLIVE RIVERS, ESQ.

V.I. Bar No.: 473

8000 Nisky Center, Suite 233

St. Thomas, VI 00802

Tel: (340) 776-4666

Fax: (340) 776-4525

crrivers64@gmail.com

CASE INFORMATION AND LITIGANT DATA FORM

Plaintiff(s) – Page 1

CASE NO. _____ DATE OF FILING: September 6, 2019

PARTY INFORMATION

PLAINTIFF 1: (FULL NAME)

Roseannie Cuffy

PLAINTIFF 2: (FULL NAME)

ALIAS: _____

PLACE OF BIRTH: _____

Y OB: _____

YEAR

MAILING ADDRESS: (Include zip code)

P.O. Box 307843

St. Thomas, U.S. Virgin Islands 00802

PHYSICAL ADDRESS:

19-2-10 Estate Smith Bay

St. Thomas, U.S. Virgin Islands 00802

PLACE OF EMPLOYMENT: _____

EMAIL ADDRESS: _____

HOME TELEPHONE: () _____

CELL NUMBER: () _____

WORK NO.: () _____

FAX NO.: () _____

ATTORNEY INFORMATION

☐ CHECK HERE IF APPEARING PRO SE (ON YOUR OWN BEHALF, WITHOUT AN ATTORNEY)

ATTORNEY 1: (FULL NAME)

Clive Rivers, Esq.

ATTORNEY 2: (FULL NAME)

MAILING ADDRESS: (Include zip code)

8000 Nisky Center, Suite 233

St. Thomas, U.S. Virgin Islands 00802

PHYSICAL OFFICE ADDRESS:

☒ Check if Same as Mailing Address

☐ Check if Same as Mailing Address

EMAIL ADDRESS:

crrivers64@gmail.com

HOME TELEPHONE: () _____

CELL NUMBER: () _____

WORK NO.: (340) 776-4665

FAX NO.: (340) 776-4525

CASE INFORMATION AND LITIGANT DATA FORM

☐ Check here if there are more than two (2) plaintiffs and/or plaintiffs' attorneys involved in this case, and attach a separate sheet that includes the required information for all such additional persons.

CASE INFORMATION

Place an X next to the case type that best describes this case:

CIVIL ACTIONS:

- TRACK 1:**
(Basic): ☐ Debt/Foreclosure ☐ Eminent Domain ☐ Condemnation ☐ Debt Collection
☐ Enforcement of Settlement/Arbitration Award ☐ Enforcement and Execution Actions
- TRACK 2:**
(Standard) ☒ Contract (Goods, Employment Contracts, Buyer-Plaintiff disputes over goods; Other)
☐ Intentional Torts (Non-personal injury; Personal Injury; assault battery; intentional infliction of emotional distress, etc.) ☐ Real Property Disputes (Partition/Quiet Title/Ownership-Use disputes/Boundary disputes/Values Disputes) ☐ Tax-related matters ☐ Non-domestic relations Injunctive Relief Actions (Permanent and Preliminary Injunction)* ☐ Automobile negligence (to include personal injury, property loss and wrongful death resulting therefrom)
☐ Malpractice (medical, legal, other professional) ☐ Premises Liability
☐ Slander/Libel/Defamation ☐ Negligence ☐ Negligent infliction of emotional distress ☐ Fraud/Bad Faith ☐ Civil-Other (civil actions not specifically listed in a separate case type, for example: Civil Contempt actions; Action for Declaratory Judgment; Actions for Accounting; Appointment of Receiver; Enforcement of Equitable Liens; Equitable Relief; Interpleader; Wrongful Attachment and Stay of Execution, Conciliation; Conciliation; Dissolution of Instrument; Dissolution of Partnership; Forfeiture)
(*NOTE: Temporary Restraining Orders/Injunctive Relief are filed as emergency actions and considered on Track 6. Permanent and Preliminary injunctions are considered on this track)
- TRACK 3:**
(Complex) ☐ Class Action ☐ Product Liability ☐ Toxic Tort ☐ Wrongful/Employment Disputes
☐ Product Liability-Tobacco
- TRACK 4:**
(Review/
Administrative
Appeals) ☐ Writ of Review/Admin. Appeal ☐ Petition for Review of Magistrate Decision
- TRACK 5:**
(Specialized
Actions/PITA) ☐ Habeas Corpus/Prisoner petitions ☐ Expungement ☐ Extradition ☐ Foreign Judgment
☐ Judicial Review/Mandamus ☐ Civil Miscellaneous-Other (civil miscellaneous actions not specifically listed in a separate case type, to include: Petitions for mediator qualification/certification petitions; process server qualification; Letter Rogatory/pre-case discovery petitions etc.)
- TRACK 6:**
(EMERGENCY
/EXPEDITED
PETITIONS) ☐ Small Claims ☐ Landlord/Tenant/FED
☐ Petition for Temporary Restraining Order ☐ Other Emergency Petitions

FAMILY ACTIONS:

- TRACK 1:** ☐ Uncontested Divorce, Dissolution of Vesper Marriage ☐ Legal Separation
SUMMARY ☐ Visitation ☐ Paternity; ☐ Adoption; ☐ Conservatorship/Trusteeship; ☐ Name Change,
PROCEEDINGS ☐ PINS petitions, ☐ Guardianship (Juvenile)
- TRACK 2:** ☐ Custody (UCCA, Foreign Judgment, and Private Custody); ☐ Child support (All child support)
STANDARD ☐ Abuse; Neglect; ☐ Dependency/Child Victim; ☐ Contested Divorce
- TRACK 3:** ☐ Juvenile Delinquency; ☐ Custody (Public); ☐ Termination of Parental Rights
COMPLEX
- TRACK 4:** ☐ Petition for Restraining Order (DV); ☐ Involuntary Commitment; ☐ Guardianship (Adult);
EMERGENCY ☐ Marriage Application; ☐ Emergency Relief of any kind (i.e. emergency temporary custody,
PETITIONS etc.)

PROBATE ACTIONS:

- TRACK 1:** ☐ Summary Administration; ☐ Settlement Without Administration; ☐ Wills for Safekeeping;
SUMMARY ☐ Ancillary Probate Matters; ☐ Registration of Foreign Wills
OR EXPEDITED
PROCEEDINGS
- TRACK 2:** ☐ Settlement WITH Administration, ☐ Probate for Wrongful Death Actions; ☐ Probate by
STANDARD Creditor; ☐ All other Probate matters not specified in Track 1.

LIST/SPECIFY ALL CAUSES OF ACTION PLED: Breach of Contract, Breach of Implied Covenant of Good
Faith and Fair Dealings, Bad Faith

SIGNATURE(S) -- (Each Plaintiff's Attorney or Pro Se Litigant is Required to Sign and Date the document below):

Clive Rivers, Esq.

PRINT

SIGNATURE

DATED

9/5/2019

PRINT

SIGNATURE

DATED

CASE INFORMATION AND LITIGANT DATA FORM

CASE NO. _____

PARTY INFORMATION

DEFENDANT 1: (FULL NAME)

Bank of Nova Scotia

ALIAS: Scotiabank

PLACE OF BIRTH:

Y OB: _____

YEAR

MAILING ADDRESS: (Include zip code)

214C Estate Altona & Welgunst

St. Thomas, U.S Virgin Islands

PHYSICAL ADDRESS:

214C Estate Altona & Welgunst

St. Thomas, U.S. Virgin Islands

PLACE OF EMPLOYMENT:

DEFENDANT 2: (FULL NAME)

Ascendancy USVI LLC

PLACE OF BIRTH:

Y OB: _____

YEAR

5304 Yacht Haven Grande, Suite 100

St. Thomas, U.S. Virgin Islands 00802

EMAIL ADDRESS:

HOME TELEPHONE: ()

CELL NUMBER: ()

WORK NO.: (340) 774.0037

FAX NO.: ()

DEFENSE ATTORNEY INFORMATION☐ CHECK HERE IF APPEARING PRO SE (ON YOUR OWN BEHALF, WITHOUT AN ATTORNEY)

ATTORNEY 1: (FULL NAME)

ATTORNEY 2: (FULL NAME)

MAILING ADDRESS: (Include zip code)

PHYSICAL OFFICE ADDRESS:

☐ Check if Same as Mailing Address☐ Check if Same as Mailing Address

CASE INFORMATION AND LITIGANT DATA FORM

EMAIL ADDRESS:

HOME TELEPHONE: (____) _____

CELL NUMBER: (____) _____

WORK NO.: (____) _____

FAX NO.: (____) _____

(____) _____

(____) _____

(____) _____

(____) _____

☐

Check here if there are more than two (2) defendants and/or defense attorneys involved in this case, and attach a separate sheet that includes the required information for all such additional persons.

SIGNATURE(S) -- (Each Defense Attorney or Pro Se Defendant is Required to Sign and Date the document below):

PRINT

SIGNATURE

DATED

PRINT

SIGNATURE

DATED